

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BH99 REALTY, LLC,

Plaintiff,
-against-

QIAN WEN LI, JIE JUAN YANG, and 99 WILSON,
INC.,

DefendantS.
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MEMORANDUM AND ORDER

Case No. 10-CV-00693 (FB) (JO)

Appearances:

For the Plaintiff:

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BARRY FELDER, ESQ.
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For the Defendants:

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BLOCK, Senior District Judge:

On October 24, 2011, Magistrate Judge Orenstein issued a Report and Recommendation (“R&R”) recommending that the Court lift a stay on entry of a default judgment it ordered on May 13, 2011 (“May 13 Order”). The stayed judgment orders the foreclosure and sale of property located at 99 Wilson Avenue, Brooklyn, New York and finds defendant Qian Wen Li liable in the amount of \$696,878.95, comprised of: (1) \$575,155.64 in unpaid principal; (2) \$109,860.64 in unpaid interest on principal; (3) \$3,449.15 in amounts advanced by plaintiff's predecessor for property taxes and insurance premiums; (4) \$786.92 in late fees; (5) \$500.00 for a broker price opinion report; (6) \$5,439.50 in attorney's fees; and (7) \$1,687.10 in costs. *See* R&R

at 1; May 13 Order at 2, 5. The May 13 Order stayed entry of judgment pending limited jurisdictional discovery, supervised by Magistrate Judge Orenstein. *See* May 13 Order at 5. The R&R concludes that the Court has subject matter jurisdiction. R&R at 1. It further states that the parties' failure to object within fourteen days of receiving it would preclude appellate review, *see* R&R at 8, and notice was electronically sent to counsel. No objections have been filed.

If clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without *de novo* review. *See Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."). The Court will excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error, *see Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000); no such error appears here. Accordingly, the Court adopts the R&R lifting the stay without *de novo* review.

At plaintiff's request, the May 13, 2011, judgment is modified in three respects. First, the sale will be conducted by the referee alone, outside the courthouse and without a United States Marshal.

Second, the amount of prejudgment interest due is modified to reflect entry of judgment on January 24, 2012. As originally calculated, this interest ran only through March 30, 2011, the estimated date of judgment. Applying the default annual rate of 12.125 percent to the unpaid principal amount of \$575,155.64 for the period of 299 days between March 30, 2011, and January 24, 2012, results in an additional \$57,127.53. Adding that to the \$109,860.64 in prejudgment interest originally awarded results in a total of \$166,988.17. This brings the total judgment against Qian Wen Li to \$754,006.48, including prejudgment interest to January 24, 2012.

Third, plaintiff has submitted a property description, which will be entered along with the amended proposed judgment.

The Court directs the Clerk to lift the stay in accordance with the R&R and enter judgment in accordance with this Court's May 13, 2011, Order, as modified.

SO ORDERED.

FREDERIC BLOCK
Senior United States District Judge

Brooklyn, NY
January 24, 2012